

**BFI Waste Systems and Truck Drivers Union, #170  
a/w International Brotherhood of Teamsters,  
AFL-CIO, Petitioner. Case 1-RC-21194**

August 3, 2001

**DECISION AND DIRECTION OF SECOND  
ELECTION**

**BY CHAIRMAN HURTGEN AND MEMBERS  
TRUESDALE  
AND WALSH**

The National Labor Relations Board has considered an objection to an election held June 30, 2000, and the hearing officer's report recommending disposition of the objection. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 31 for and 53 against the Petitioner, with 4 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and brief, has adopted the hearing officer's findings and recommendations, and finds that the election must be set aside and a new election held.

Contrary to our dissenting colleague, we agree with the hearing officer's recommendation that the Petitioner's objection be sustained. The facts, fully set forth in the hearing officer's report, are summarized below.

The Employer operates a trash collection facility in Auburn, Massachusetts, which is one of eight or nine such facilities that comprise the Employer's New England District. Bruce Stanas manages the district's operation from his office in Southboro, Massachusetts, and tries to visit each facility at least one time every 2 weeks.

In March 2000,<sup>1</sup> the Employer established a fleet safety inspection program to promote employee safety and the upkeep of the Employer's vehicles. The program applied to all of the district's facilities and mandated one facility inspection per month. Inspections were to be undertaken by the facility managers, coordinators, and supervisors, and the program's guidelines do not mention Stanas' participation in the program. The guidelines provide for discipline of employees whose vehicles fail inspections, but are silent as to rewarding employees for excellent results. Employees of the Auburn facility were advised of the program on March 13, by way of an employer memorandum.

The first inspection attended by Stanas occurred at the district's Tyngsboro, Massachusetts facility. A cookout and a raffle were held in conjunction with the inspection, and on May 18, Stanas sent an e-mail message to all district managers involved in the program announcing that

he would participate in at least three inspections per year at each facility. Stanas informed the district managers that he would "likely sponsor" a cookout for all facility employees, and that he would "likely sponsor" a raffle "for the excellent group each and every time I attend the fleet inspection." Both events, Stanas stated, would be restricted to those times that he or another district representative assisted in the inspection. There is no evidence that the Employer advised employees of either Stanas' participation in the inspection program or that Stanas' participation might include an employer-sponsored cookout and raffle.

The second inspection attended by Stanas occurred at the Employer's Quincy, Massachusetts facility in late May, and Stanas participated in a third inspection in early June at the Employer's Pittsfield, Massachusetts facility. No predetermined schedule controlled Stanas' attendance or the timing of these inspections, and a cookout and raffle was conducted at each facility.

On May 22, the Petitioner filed a petition to represent employees at the Employer's Auburn facility. Stanas was present almost every day in June at that facility preparing for the union election scheduled to be held on June 30. On June 20, the Employer conducted and Stanas participated in an inspection at the Auburn facility and a cookout occurred that day. This was the third inspection at Auburn, but the first in which Stanas participated. The Employer distributed a number of items to employees at the cookout, including a T-shirt that read "BFI Safety First" on the front side and "Proud to be Union free Auburn Facility" on the back.<sup>2</sup> According to Stanas, the inspection was held on June 20, because it was convenient for him, given his almost daily presence there working on the union campaign and because of the district's diverse geographic area. On June 21, the Employer posted a notice that, for the first time, advised employees that it intended to give away five televisions. The notice listed as eligible to win a television only those 22 employees who, from a total of 92 bargaining unit employees, scored an "excellent" in the inspection. There is no evidence that the Employer ever informed employees that such raffles had been conducted elsewhere and would be conducted at all facilities when Stanas participated in inspections. The total value of the televisions was \$890. A drawing occurred between June 23 and 28, and five employee winners received televisions during this time period. As stated above, the election was held on June 30.

<sup>1</sup> All dates refer to 2000.

<sup>2</sup> No objections have been filed to the Employer's distribution of T-shirts or other items at the cookout.

The hearing officer first examined the Board's recent decision in *Atlantic Limousine*, 331 NLRB 1025 (2000). In that case, as quoted by the hearing officer, the Board prohibited parties from conducting a raffle if "eligibility to participate in the raffle or win prizes is in any way tied to voting in the election or being at the election site on election day," or if "the raffle is conducted at any time during a period beginning 24 hours before the scheduled opening of the polls and ending with the closing of the polls." *Id.* at 1026. The hearing officer determined that the facts here did not fall under either prong of the *Atlantic Limousine* rule.

The Board in *Atlantic Limousine* also concluded, however, that election raffles held outside of the 24-hour period would be scrutinized to determine whether "they involve promises or grants of benefit that would improperly affect employee free choice; or whether they allow the employer to identify employees who might or might not be sympathetic, and thus to learn where to direct additional pressure or campaign efforts." *Id.* at fn. 13. The hearing officer found no basis on which to conclude that the raffle in the instant case allowed the Employer to identify employees who might or might not be sympathetic.

In examining whether the raffle amounted to an objectionable promise or grant of benefit, the hearing officer applied the test set out by the Board in *B & D Plastics*, 302 NLRB 245 (1991).<sup>3</sup> The hearing officer recommended sustaining the Union's objection because the raffle conducted by the Employer was "a benefit of the type that would improperly influence employee free choice in the election." Specifically, the hearing officer concluded that: the total value of the raffle prizes (\$890) was substantial; that 22 of 92 bargaining unit employees, or approximately 24 percent of the bargaining unit, were eligible to participate in the raffle; that employees could reasonably believe that the real purpose of the raffle was to influence the election outcome because the raffle was

open only to bargaining unit employees, and because employees never received notice from the Employer connecting the raffle to Stanas' participation in the districtwide inspection program; and that the timing of the raffle—no more than 7 days before the election—was telling. The hearing officer also concluded that the Employer had failed to advance a legitimate business reason for holding the raffle so close in time to the election.

Our dissenting colleague would not find the raffle objectionable, stating that he continues to adhere to the test of *Sony Corp. of America*, 313 NLRB 420 (1993), and that he would apply the *Sony* test to the circumstances here. As our dissenting colleague acknowledges, however, the Board overruled *Sony* in *Atlantic Limousine*, stating that it was "abandon[ing]" *Sony's* approach because "the costs of the case-by-case approach have been unacceptably high: time-consuming litigation, divided Board decisions, confusing and seemingly inconsistent results, and unwarranted delays in the completion of representation proceedings." *Atlantic Limousine*, supra, 331 NLRB at 1028. We conclude that the reasons we gave in *Atlantic Limousine* for abandoning *Sony* still are persuasive today.

The dissent maintains that *B & D Plastics* is not controlling and that the raffle was not objectionable under *Sony* and *Atlantic Limousine*. As stated supra, however, the Board in *Atlantic Limousine* overruled *Sony* and concluded that election raffles held outside of the 24-hour period—such as the raffle here—would be scrutinized to determine, *inter alia*, whether "they involve promises or grants of benefit that would improperly affect employee free choice[.]" *Atlantic Limousine*, supra at 1029 fn. 13. *B & D Plastics* summarizes the factors the Board examines in grant-of-benefit cases, and it is therefore appropriate to apply *B & D Plastics* here.<sup>4</sup>

Our dissenting colleague also would find that even assuming arguendo that *B & D Plastics* applies to the instant case, the raffle would be valid. The dissent characterizes the size of the benefit conferred by the Employer as "relatively small," stating that "the value of a raffle ticket was worth less than ten dollars[ ]" when the \$890 in total prize value is divided amongst the bargaining unit's 92 employees. We disagree.

First, the Board has not adopted the approach put forth by the dissent of focusing on the value of the raffle ticket.<sup>5</sup> Instead, the Board has focused on the value of

<sup>3</sup> The Board in *B & D Plastics* stated in relevant part that:

Our standard in preelection benefit cases is an objective one. (Citation omitted.) To determine whether granting the benefit would tend unlawfully to influence the outcome of the election, we examine a number of factors, including: (1) the size of the benefit conferred in relation to the stated purpose for granting it; (2) the number of employees receiving it; (3) how employees reasonably would view the purpose of the benefit; and (4) the timing of the benefit. In determining whether a grant of benefits is objectionable, the Board has drawn the inference that benefits granted during the critical period are coercive. It has, however, permitted the employer to rebut the inference by coming forward with an explanation, other than the pending election, for the timing of the grant or announcement of such benefits. (Citations omitted.)

*B & D Plastics*, supra.

<sup>4</sup> Even the Employer acknowledges that the *B & D Plastics* test is the appropriate one to apply.

<sup>5</sup> The dissent relies on *Chicagoland Television News*, 328 NLRB 367 (1999), motion for reconsideration denied 330 NLRB 630 (2000), for the proposition that the Board has previously utilized a "per employee" approach. That case did not involve an employer-sponsored

the raffle prizes and we continue to do so here. See the discussion in *Atlantic Limousine*, supra, 331 NLRB at 1028.

We agree with the hearing officer's conclusion that the televisions, valued at \$890, were a substantial benefit—particularly in light of the Employer's purported "purpose for granting [the benefit]." *B & D Plastics*, 302 NLRB 245. Stanas testified that the raffle was held at the Auburn facility because it had been so well received by employees at the Tyngsboro facility. As found by the hearing officer, however, there is no evidence that the Employer previous to May had ever before raffled rewards of any value to its employees, and there is no evidence that the Employer previous to June, had ever before raffled rewards at the Auburn facility. Under these circumstances, where the potential to receive \$890 in prizes is suddenly<sup>6</sup> offered by the Employer to employees less than one week before the election, we are persuaded that \$890 was a substantial benefit and sent a message to employees that "the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged." *B & D Plastics*, 302 NLRB 245.

Our dissenting colleague also asserts that "only" a "few" employees received this benefit—those 22 employees receiving an "excellent" inspection rating—which the dissent argues indicates that employees would not view the purpose of the benefit as an inducement to vote against union representation. We disagree. As stated by the hearing officer, 22 employees is not an insignificant number, particularly where each of the 22 is a bargaining unit employee, and where that number comprises 24 percent of the total bargaining unit. The number also is not insignificant where a switch of as few as 12 employees to voting in favor of the Union could have reversed the election's outcome.

In addition, we believe that the timing of the Employer's benefit, which the dissent acknowledges "presents a somewhat closer issue[.]" also supports the hearing officer's finding of objectionable conduct. The dis-

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affle and, thus, did not utilize the "per ticket" approach advocated by the dissent here. Further, although the Board in *Chicagoland* did conclude—as the dissent points out—that a \$2200 employer-sponsored party was not objectionable, the Board relied on mitigating factors not present here. Applying *B & D Plastics*, the Board found that the employer "had a history" of sponsoring similar parties, and that the employer's posted invitation to employees clearly disassociated the event from the election. *Id.* By contrast, here the Employer had never previously sponsored a raffle at the Auburn facility and the Employer did nothing to disassociate the raffle from the election campaign in the minds of bargaining unit employees.

<sup>6</sup> The Employer already had conducted two inspections at the Auburn facility, both well in advance of the election, but the Employer held no raffle on these occasions.

sent characterizes the timing of the Employer's conferral of benefit as "about a week or so before the election[.]" The hearing officer's finding, however, is that the raffle took place some time between "June 23 and June 28." The televisions may have been distributed to employees as late as just 48 hours before the election.<sup>7</sup> Given the proximity of the Employer's conferral of benefit to the election, the "inference that benefits granted during the critical period are coercive" is especially strong under the facts here. *Id.*

Contrary to our dissenting colleague, we agree with the hearing officer's rejection of the Employer's defense that the raffle was part of a districtwide program implemented before the union campaign began. The Board has long held that, "where an increase in benefits is part of an established company policy or pattern, a grant of those benefits or announcement of them prior to the election is not grounds for setting aside an election." *Northern Telecom, Inc.*, 233 NLRB 1104, 1105 (1977) (additional citations omitted). We find, however, that the raffle element of the inspection program at issue here was not sufficiently defined to constitute an "established company policy or pattern."

As found by the hearing officer, the inspection program when launched in March contained no reference to rewarding employees in any way for their performance in conjunction with the program. Not until May 18, on the eve of the Petitioner's filing of its representation petition, did the Employer through Stanas' e-mail incorporate a possibility of reward for employees—the possibility that Stanas would participate in future facility inspections and that, when he did, he "would likely" sponsor a raffle. This equivocation by the Employer was critical to the hearing officer's rejection of the Employer's defense. The Employer equivocated in establishing a role or schedule for Stanas in the program and, more importantly, in incorporating the granting of a benefit to employees into the policy. As stated by the hearing officer, the amount of discretion retained by the Employer prevents the Employer now from claiming that the raffle was part of "an established company policy or pattern within the meaning of *Northern Telecom*."<sup>8</sup> *Id.*

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<sup>7</sup> In this regard, the hearing officer cited employee Dennis Reidy's testimony that employee Tom Griffin received a television from the Employer on June 28, just 2 days before the election.

<sup>8</sup> Of course, *Northern Telecom* is not the only defense available to an employer. Under *B & D Plastics*, supra, 302 NLRB 245, a grant of benefit during the critical period is not objectionable if the employer "com[es] forward with an explanation, other than the pending election, for the timing of the grant" of benefit. See fn. 3, supra. Contrary to our dissenting colleague, however, we agree with the hearing officer that "[o]verall the Employer has failed to meet its burden that it would have had the raffle in Auburn when it did if the Union were not on the

The hearing officer also correctly rejected the Employer's assertion that convenience to Stanas explains why it conducted the raffle when it did. It is true, as noted by the dissent, that Stanas announced to other managers the likelihood of conducting raffles in conjunction with the Employer's inspection program 4 days before the Union filed its representation petition. Importantly, however, Stanas did not schedule his own participation at the Auburn facility until after the petition was filed. In addition, the Employer's assertion of business convenience because of Stanas' presence at Auburn in June is not persuasive given Stanas' acknowledged practice as district manager to visit each facility at least once every two weeks. As stated by the hearing officer, the geographic size of the district is not large, and there was nothing to prevent the Employer from scheduling a raffle and inspection in one of the other facilities within the district or from sponsoring the raffle at Auburn after the election rather than before.

Under these circumstances, we find that the hearing officer correctly rejected the Employer's defenses. Accordingly, we agree with the hearing officer that the raffle constituted objectionable conduct warranting setting aside the election.

[Direction of Second Election omitted from publication.]

CHAIRMAN HURTGEN, dissenting.

Contrary to the majority and the hearing officer, I find that the Employer's preelection raffle did not interfere with the election under the test of *Sony Corp. of America*, 313 NLRB 420 (1993), the test that I continue to apply in these cases.<sup>1</sup> Accordingly, I would overrule the Petitioner's objection and certify the election results here.

The evidence shows that the Employer's district manager, Bruce Stanas, is responsible for eight or nine district trash collection facilities that the Respondent operates, including the Auburn, Massachusetts location involved in this case. In March 2000,<sup>2</sup> before the advent of the Union's campaign, Stanas developed and implemented a fleet safety inspection program for the district facilities. Under Stanas' program, he visits one of the sites each month.

The first fleet inspection that Stanas attended occurred in early May at the Employer's Tyngsboro, Massachusetts facility. Stanas testified that, after the inspection

ended, he decided to have a cookout and raffle for all employees who participated in the inspection. On May 18, Stanas sent an electronic mail message to all managers informing them that he expected to be present at each location a minimum of three times annually for the monthly inspections and that the Employer would likely hold a cookout and raffle for employees on these occasions.<sup>3</sup> During the last week of May, Stanas was present at the Respondent's Quincy, Massachusetts facility for the second fleet inspection, after which there was a cookout and raffle. The Employer held the third of these inspections at its Pittsfield, Massachusetts location about the first week of June. There was no set schedule for Stanas' presence at the monthly inspections. The district manager for each facility had between \$800 and \$1200 to spend on prizes for the raffle winners.

On June 20, the Respondent held the fourth of these inspections. This one was at the Auburn site. Stanas stated that, between early June and the June 30 election, he spent a portion of virtually every day at the Auburn facility, participating in the Employer's election campaign. He decided to conduct the Auburn raffle and cookout that month because it was convenient for him, given his constant presence there. There were about 92 employees in the Auburn bargaining unit, and 22 of them became eligible to participate in the raffle by scoring "excellent" in the fleet inspection. The Employer selected five raffle winners and each received a television set between 2 days and a week before the June 30 election. The total value of the five televisions that the Employer distributed was about \$890.

I disagree with the hearing officer's finding, which the majority adopts, that the raffle was a benefit that improperly influenced employee free choice in the election. The multifactor test for determining the legality of raffles is set forth in *Sony*. In *Sony*, the Board quoted the following principles regarding raffles:

[T]he Board has held that the conduct of a raffle does not constitute a per se basis for setting aside the election. Rather, the Board will consider all of the attendant circumstances in determining whether the raffle destroyed the laboratory conditions necessary for assuring employees full freedom of choice in selecting a bargaining representative. Some of the factors considered relevant by the Board have been whether the circumstances surrounding the raffle provided the employer with means of determining how and whether employees voted, whether participation was conditioned upon how the employee voted in the election or upon the result of the election, and whether the prizes were so sub-

scene." See *NLRB v. Styletek*, 520 F.2d 275, 281 fn. 5 (1st Cir. 1975) (burden is on the employer to "support with very specific facts the reason for granting benefits just then").

<sup>1</sup> *Sony* recently was overruled by *Atlantic Limousine*, 331 NLRB 1025 (2000). Former Member Brame and I dissented and we would not have overruled precedent.

<sup>2</sup> All dates are in 2000, unless otherwise noted.

<sup>3</sup> The Union did not file the instant petition until May 22.

stantial as to either divert the attention of the employees away from the election and its purpose or as to inherently induce those eligible to vote in the election to support the employer's position.[Id.]

The raffle held in this case was legal under the *Sony* factors. Here, the employer held the raffle and awarded the prizes before the election. For this reason, there is no evidence that the Employer used the raffle to determine how and whether employees voted, or conditioned participation in the raffle on how employees voted or on the result of the election. Thus, these elements of the *Sony* test clearly militate in favor of the legality of this raffle.

Regarding the monetary value of the raffle, I note that the value of a raffle ticket was even less than it was in *Sony*, where the Board upheld the raffle. In *Sony*, the unit consisted of about 120 employees, and the prizes were worth about \$1500. Thus, a raffle ticket was worth \$12.50 per person. In this case, the unit consisted of 92 employees, and the prizes were worth \$890. Thus, the value of a raffle ticket was worth less than ten dollars. This raffle clearly passes muster under the *Sony* test.<sup>4</sup>

With further respect to the value of the raffle, my colleagues focus on the total value of the prizes, rather than the value of a raffle ticket. I disagree with this approach. Surely (for example), there is a difference between giving a \$1000 prize in a unit of 500 employees, and giving a \$1000 prize in a unit of 3 employees. The granted benefit to employees is a *chance* at the prize. The chance, and hence the value of the raffle ticket, decreases inversely to the size of the unit.

Indeed, the Board used a "per employee" analysis in *Chicagoland Television News*, 328 NLRB 367 (1999). In that case, the employer held a party on the day before the election. The party cost \$2200, "with an average cost of \$25 per attendee." The cost was not so excessive as to constitute objectionable conduct.

My colleagues seem to acknowledge the fact that the Board applied a "per employee" analysis in *Chicagoland*. They apparently seek to distinguish the party there from the raffle here. However, they offer no good reason why a "per employee" approach would apply to some benefits and not to others.

<sup>4</sup> The Board later found that a similar raffle was unobjectionable in *Arizona Public Service*, 325 NLRB 723 (1998). In that case, the unit consisted of 928 employees, and the prizes were worth \$4,000. Thus, the value of a raffle ticket was about \$7 each. In *Atlantic Limousine*, the unit consisted of about 145 employees, and the prize was worth about \$350. Thus, a raffle ticket there was worth about \$2.50 each, and the hearing officer found that the raffle passed muster under *Sony*. Although former Member Brame and I agreed with the hearing officer's decision, the Board majority, as noted, abandoned the *Sony* test and reached a contrary result.

The majority's other efforts to distinguish *Chicagoland* are similarly unavailing. The majority says that the employer there had a history of sponsoring similar parties. However, the Board specifically found in *Chicagoland* that "we are not persuaded that there would have been a party even if there were no election." Thus, the evidence that the employer there made no campaign speeches at its party did not mean that the party was unrelated to the election. Notwithstanding that, the Board held that the party there was not objectionable. The conduct in this case is even less objectionable. The Employer here, in contrast to the situation in *Chicagoland*, decided to hold its raffles even before the Union filed the instant petition. Further, unlike that case in which the employer held the party the day before the election, the Employer here, which previously had distributed turkeys at Thanksgiving and given Christmas parties for employees, conducted its raffle and awarded the prizes about a week before the election.

Moreover, even focusing solely on the value of the prize, the value of the Employer's raffle prizes was modest relative to cases in which the Board has found that an employer raffle interfered with the election. See *Drilco*, 242 NLRB 20 (employer announced prizes that included the choice of an all-expense trip for two to Hawaii or a trip for a family to either Disneyland or Disney World) (1979).

In sum, the raffle was lawful under *Sony*. Further, even under the majority view in *Atlantic Limousine*, supra at fn. 1, the raffle did not constitute election interference. Eligibility to participate in the raffle or win a prize was not tied to voting in the election or being at the election site on election day, and the raffle was not conducted in the 24-hour period before the election.

My colleagues also rely heavily on *B & D Plastics*, 302 NLRB 245 (1991). I do not agree that *B & D* case is controlling. It deals with the matter of beneficial changes in employment conditions prior to an election (there, a paid day off). The cases that deal with the specific matter of raffles are *Sony* and *Atlantic Limousine*. I have shown how these cases support the legality of the raffle here.

Further, even assuming *arguendo* that *B & D* applies to the instant case, the raffle would still be valid. In *B & D*, the Board set aside the election based on the employer's conduct in granting employees a benefit (a day off with pay) 2 days before the election. The Board stated:

Our standard in preelection benefit cases is an objective one. [citation omitted] To determine whether granting the benefit would tend unlawfully to influence the outcome of the election, we examine a number of factors including (1) the size of the benefit conferred in relation to the stated purpose for granting it; (2) the number

of employees receiving it; (3) how employees could reasonably view the purpose of the benefit; and (4) the timing of the benefit.[Id.]

Here, as found above, the size of the benefit, i.e., value of a raffle ticket, was relatively small. Only 22 employees received this benefit, out of 92 in the unit. The Employer conducted this raffle in conjunction with its fleet inspection program and rewarded those employees receiving an “excellent” grade, by giving them a chance in the raffle. Thus, the employees would not reasonably view the benefit as being tied to the election. In these circumstances, I find that the employees would recognize that the raffle was tied to their performance in the fleet inspection as the Employer judged it, and was not meant to influence their votes in the election. There is no evidence that links this raffle either to the Employer’s election campaign or to the election itself. Thus, I conclude that the Employer’s conduct passes muster under the first three elements of *B & D Plastics*.

I recognize that the last element of the test—the timing of the benefit—presents a somewhat closer issue. Nonetheless, the Employer’s conduct, in my view, did not rise to the level of objectionable conduct. Although the Employer conducted this raffle about a week or so before the election, the raffle was only a small part of the district wide inspection program that the Employer had implemented before the organizing campaign began. Further, Stanas announced 4 days before the Union filed the instant petition that the fleet inspections he attended would include a cookout and raffle. There were eight or nine facilities in Stanas’ district; the Employer previously had held inspections, cookouts, and raffles at three of the facilities; and the Employer was due, by late June, to hold another at one of the five remaining district locations that remained on Stanas’ schedule of hosting three annually for each site. In sum, it was Auburn’s turn

(among others) to host this event and it was convenient for Stanas to hold it there since he was present at the facility nearly every day. In these circumstances, and based on the nature of the prizes and the few employees receiving them, I conclude that the Employer’s raffle was not calculated to induce employees to vote against union representation. Critically, as stated, the Employer made no connection between the raffle being held in conjunction with its fleet inspection and the election that occurred more than a week later. Thus, the timing of events here does not establish that the Employer improperly conferred benefits on the unit employees.

My colleagues correctly note that where an increase in benefits is part of an established company policy or pattern, the grant of such benefits prior to the election is permissible. However, this is not the *only* manner in which an increase in benefits is permissible. If a policy, even a new one, is adopted prior to the union’s campaign, it can be lawful. In the instant case, the policy, albeit a new one was adopted prior to the union’s campaign, it can be lawful. Thus, the action was motivated by a legitimate business purpose unrelated to the election. *Perdue Farms*, 323 NLRB 345, 352 (1997), modified on other ground, 144 F.3d 830 (D.C. Cir. 1998).

My colleagues also say that, prior to May, there were no raffles for employees, and that, prior to June, there were no raffles in Auburn. As to the first matter, the decision to have a raffle was in May, and was prior to the petition filed here. Thus, it was a lawful decision. And, as to the second matter, the raffle at Auburn was consistent with that May decision.

For these reasons, I reject the majority’s and the hearing officer’s conclusion that the Employer’s conduct in holding this preelection raffle warrants setting aside the election. I would certify the results of this election.